STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 3, 2005
v	No. 250595 Oakland Circuit Court
RASHEED ABDULA UNDERWOOD, Defendant-Appellant.	LC No. 02-184147-FC

Before: Zahra, P.J., and Neff and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from a bench trial conviction of armed robbery, MCL 750.529, for which he was sentenced as an habitual offender, second offense, MCL 769.10, to eight to thirty years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant, the manager of a Denny's restaurant, conspired with Derrick Vaughn, a former employee, to steal money from the office safe by pretending to be the victim of a robbery. Defendant was convicted as an aider and abettor. Defendant's sole issue on appeal is that the evidence was insufficient to sustain the verdict.

A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39; 642 NW2d 339 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The trial court's factual findings are reviewed for clear error. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). A finding of fact is considered "clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *Id.*

The elements of armed robbery are (1) an assault, (2) a felonious taking of property from the victim's person or presence, (3) while the defendant is armed with a dangerous weapon described in the statute. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). "[T]he prosecutor need not show that the victim actually owned the property taken." *People v Rodgers*,

248 Mich App 702, 707; 645 NW2d 294 (2001). It is sufficient "that the property was taken in the victim's 'presence' and that the victim's right to possess the property was superior to the defendant's right to possess it." *Id.* Property is in the presence of a person if it is " 'so within his reach, inspection, observation or control, that he could, if not overcome by violence or prevented by fear, retain his possession of it.' " *People v Beebe*, 70 Mich App 154, 159; 245 NW2d 547 (1976), quoting *Commonwealth v Homer*, 235 Mass 526, 533; 127 NE 517, 520 (1920).

One who aids and abets in the commission of an offense may be charged, convicted and punished as a principal. *People v Moore*, 470 Mich 56, 63; 679 NW2d 41 (2004), quoting *People v Palmer*, 392 Mich 370, 378; 220 NW2d 393 (1974). The elements that must be proved to convict the defendant as an aider and abettor are " '(1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that [the defendant] gave aid and encouragement.' " *Id*. at 67-68, quoting *Carines, supra* at 768. "Defendant's specific intent or his knowledge of the principal's specific intent may be inferred from circumstantial evidence." *People v Eggleston*, 149 Mich App 665, 668; 386 NW2d 637 (1986).

Defendant first challenges whether the evidence was sufficient to prove that an armed robbery was committed. There was testimony from an employee of the restaurant that she was abducted at gunpoint and tied up while Vaughn, the assailant, went into the office to get money defendant had removed from the safe. Although this witness did not see the money being taken, it was taken from her presence and, but for the fact that she had been tied up and ordered at gunpoint to stay there and not look around, she could have prevented the loss by sounding the security alarm. Taken in a light most favorable to the prosecutor, the evidence was sufficient to prove that an armed robbery occurred. *Harmon, supra* at 524.

Defendant next contends that the evidence was insufficient to prove that he specifically intended to commit an armed robbery or knew that Vaughn intended to commit such an offense. However, the evidence showed that defendant conspired with Vaughn to steal money from the restaurant. They agreed to make it look like a robbery and defendant would pretend to be a victim of the robbery. Further, defendant admitted to the police that he saw Vaughn holding a gun when he let him into the restaurant. The evidence also showed that defendant knew at the time he let Vaughn into the restaurant that another employee was present. Vaughn went toward the front of the restaurant where the other employee was working, brought her back to the office at gunpoint, and tied her up before defendant turned over the money from the safe. Taken in a light most favorable to the prosecutor, the evidence was sufficient to prove that defendant knew that Vaughn intended to commit armed robbery.

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Jessica R. Cooper